Supreme Court, U.S.
FILED
JAN 13 1986
JOSEPH F. SPANIOL, JR.
CLERK

No. 85-1015

In the Supreme Court of the United States

OCTOBER TERM, 1985

LEEBRO MANAGEMENT, INC., D/B/A SAMSON BUICK, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

CHARLES FRIED
Solicitor General
Department of Justice
Washington, D.C. 20530
(202) 633-2217

ROSEMARY M. COLLYER
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

ROBERT C. BELL, JR.
Attorney
National Labor Relations Board
Washington, D.C. 20570

QUESTION PRESENTED

Whether, in the circumstances of this case, the Board reasonably found that a successor employer's acquisition of its predecessor's business operations removed the predecessor's collective bargaining agreement as a bar to the filing of a representation petition.

TABLE OF CONTENTS

	Page
Opinions below	1
Jurisdiction	1
Statement	2
Argument	5
Conclusion	7

TABLE OF AUTHORITIES

Cases:

General Extrusion Co., 121 N.L.R.B. 1165	5
Great Atlantic & Pacific Tea Co., 197 N.L.R.B. 922	5
Leonard Wholesale Meats, Inc., 136 N.L.R.B. 1000	5
Mallinckrodt Chemical Works, 200 N.L.R.B. 1	6
NLRB v. *A.J. Tower Co.*, 329 U.S. 324	6
NLRB v. *Burns International Security Services, Inc.*, 406 U.S. 272	5
NLRB v. *Metro-Truck Body, Inc.*, 613 F.2d 746, cert. denied, 447 U.S. 905	6

Statute and regulation:

National Labor Relations Act, 29 U.S.C. 151 *et seq.*:	
§ 8(a) (1), 29 U.S.C. 158(a) (1)	4
§ 8(a) (5), 29 U.S.C. 158(a) (5)	4
29 C.F.R. 101.17	6

In the Supreme Court of the United States

OCTOBER TERM, 1985

No. 85-1015

LEEBRO MANAGEMENT, INC., D/B/A
SAMSON BUICK, INC., PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD IN OPPOSITION

OPINIONS BELOW

The judgment order of the court of appeals (Pet. App. 1a-2a), the decision and order of the National Labor Relations Board (Pet. App. 5a-14a), and the decision and direction of election of the Board's Acting Regional Director in the underlying representation proceeding (Pet. App. 15a-23a) are unreported.

JURISDICTION

The judgment of the court of appeals was entered on August 6, 1985. A petition for rehearing was denied on September 12, 1985 (Pet. App. 3a-4a). The

petition for a writ of certiorari was filed on December 9, 1985. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. Samson Buick Company is an automobile dealership in Pittsburgh, Pennsylvania. In 1974, the Associated Trades and Crafts Union (ATCU) was certified as the collective bargaining representative in a unit of Samson Buick's service department employees. The parties thereafter negotiated a series of collective bargaining agreements, the last of which was effective from March 31, 1981, to March 31, 1983. Upon its conclusion, the agreement was automatically renewed for a one-year term ending March 31, 1984. Pet. App. 17a.

On May 27, 1983, during the contract renewal year, petitioner agreed to purchase and assume the operations of Samson Buick, effective September 1, 1983,[1] contingent on petitioner's acquisition of a Buick franchise from General Motors. Petitioner obtained the franchise between August 10 and August 15. The closing on the purchase agreement was completed on August 29 and 30. Pet. App. 18a.

On August 31, one day after the sale closing and one day before petitioner actually was to take over operations, the United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) filed a representation petition with the Board seeking certification as the exclusive bargaining representative of petitioner's service department employees. Petitioner commenced business operations the

---

[1] All dates hereafter are in 1983 unless otherwise noted.

next day, hiring all of the employees previously employed by Samson Buick. Pet. App. 17a-18a.

On September 7, petitioner informed ATCU that it intended to abide by the terms of the collective bargaining agreement between ATCU and Samson Buick, and on September 9 ATCU responded that it also would honor the agreement. On September 13, petitioner and ATCU executed a written agreement adopting the Samson Buick contract and providing that it would continue in effect until March 31, 1984. Pet. App. 18a-19a.

2. The Board's Acting Regional Director found that the UAW's representation petition had been properly filed and ordered that an election be held. Pet. App. 15a-23a. Applying the principle that "the assumption of operations by a purchaser in good faith, which has not bound itself to assume the predecessor's contract, removes the contract as a bar to a petition" (*id.* at 19a), the Acting Regional Director reasoned that petitioner, as the successor to Samson Buick, was not bound to honor Samson's labor agreement until it agreed to do so in writing on September 13, and that the contract therefore had been removed as a bar to the representation petition when petitioner took over the business at the beginning of Septembr (*id.* at 19a-20a).

The Acting Regional Director rejected petitioner's contention that the representation petition should have been dismissed as premature because it was filed on August 31, the day before petitioner actually assumed business operations. He noted that the purchase agreement and closing had been completed before the UAW filed its petition, that the UAW "could not be expected to know the precise time that the sales agreement would take effect," and that, only

one day after the petition was filed, petitioner "hired all the employees and supervisors of the predecessor." Pet. App. 20a-21a. The Acting Regional Director concluded that to dismiss the representation petition under these circumstances would "elevate, in effect, form over substance" and would not "effectuate the policies of the Act." *Ibid.* The Board denied review of the Acting Regional Director's decision. *Id.* at 7a.

3. Following an election among petitioner's service department employees in which it prevailed by a wide margin, the UAW was certified as the employees' exclusive bargaining representative on December 9. Pet. App. 7a; C.A. App. 93, 120. Petitioner thereafter refused to recognize and bargain with the UAW, prompting the union to file an unfair labor practice charge. The Board's General Counsel issued a complaint and moved for summary judgment on the ground that all of the material issues were or could have been litigated in the representation proceeding. The Board granted the General Counsel's motion, finding that petitioner had violated Section 8(a)(5) and (1) of the National Labor Relations Act, 29 U.S.C. 158(a)(5) and (1), and it ordered petitioner to recognize and bargain with the UAW. Pet. App. 5a-14a.

4. The court of appeals summarily enforced the Board's order. Pet. App. 1a-2a.

ARGUMENT

The court of appeals correctly rejected petitioner's factbound contention that the UAW's representation petition should have been dismissed because it was filed one day before petitioner formally commenced operations. Review of the court's unpublished judgment order is plainly unwarranted.

It is well-settled, and petitioner does not dispute, that where a successor employer has acquired a business without agreeing to assume its predecessor's collective bargaining agreement, the predecessor's contract does not bar the filing of a representation petition. *NLRB* v. *Burns International Security Services, Inc.*, 406 U.S. 272, 290 n.12 (1972); *Great Atlantic & Pacific Tea Co.*, 197 N.L.R.B. 922 (1972); *General Extrusion Co.*, 121 N.L.R.B. 1165, 1168 (1958).[2] Thus, petitioner apparently concedes (Pet. 18-19) that its assumption of Samson Buick's operations on September 1, 1983 removed Samson's contract as a bar to a representation petition, and a petition filed on that date would unquestionably have been valid. Petitioner's sole contention is that the Board abused its discretion by failing to dismiss the petition under the "contract bar" rule (see note 2, *supra*) because it was filed one day earlier.

Petitioner does not challenge the Board's findings that it had closed on the agreement to purchase the

---

[2] Under the Board's "contract bar" doctrine, a valid and binding collective bargaining agreement generally bars a representation petition by a rival labor organization for a period of three years or the term of the contract, whichever is shorter. *NLRB* v. *Burns International Security Services, Inc.*, 406 U.S. at 290 n.12; *Leonard Wholesale Meats, Inc.*, 136 N.L.R.B. 1000, 1001 (1962).

business from Samson Buick at the time that the UAW filed its representation petition, that less than 24 hours later petitioner did in fact take over the business and hire all of its predecessor's employees, and that the UAW could not reasonably have been expected to know the precise time at which petitioner formally would commence operations. Moreover, petitioner does not suggest any manner in which it was prejudiced by the fact that the petition was filed on August 31 rather than September 1. Under these circumstances, the Board acted well within its broad discretion to "establish[] the procedure and safeguards necessary to insure the fair and free choice of bargaining representatives by employees," *NLRB* v. *A.J. Tower Co.*, 329 U.S. 324, 330 (1946), by refusing to dismiss the petition on the ground that it should have been filed one day later. Petitioner has cited no authority suggesting that such a harmless, de minimis departure requires that the representation petition be treated as a nullity.[3]

---

[3] Petitioner's unsupported claim that the decision here will allow unions to file petitions "long before the sale of a business goes into effect" (Pet. 17), perhaps "a month [or] a year" early (Pet. 18), is without merit. The Board's decision was based on the particular circumstances of this case, in which the petition was filed on the day between closing and assumption of operations. Moreover, the Board's long-established practice is to dismiss an election petition if the union fails within 48 hours to present signed authorization cards demonstrating that at least 30% of the bargaining unit employees have authorized the union to represent them. See *NLRB* v. *Metro-Truck Body, Inc.*, 613 F.2d 746, 749-750 (9th Cir. 1979), cert. denied, 447 U.S. 905 (1980); *Mallinckrodt Chemical Works*, 200 N.L.R.B. 1 (1972); NLRB Rules and Regulations, 29 C.F.R. 101.17.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

CHARLES FRIED
Solicitor General

ROSEMARY M. COLLYER
General Counsel

JOHN E. HIGGINS, JR.
Deputy General Counsel

ROBERT E. ALLEN
Associate General Counsel

NORTON J. COME
Deputy Associate General Counsel

LINDA SHER
Assistant General Counsel

ROBERT C. BELL, JR.
Attorney
National Labor Relations Board

JANUARY 1986

☆ U. S. GOVERNMENT PRINTING OFFICE: 1986 491507 20130